

AMENDED IN SENATE JUNE 10, 2004
AMENDED IN ASSEMBLY MAY 25, 2004
AMENDED IN ASSEMBLY MAY 12, 2004
AMENDED IN ASSEMBLY MARCH 31, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2930

Introduced by Assembly Member Koretz

February 20, 2004

An act to amend Sections 3303 and 3304 of the Government Code, relating to public safety officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2930, as amended, Koretz. Public safety officers: discipline.

Existing law sets forth the conditions for interrogation of a public safety officer who is under investigation, when the interrogation could lead to punitive action, as specified, and prohibits the loaning or reassignment of a public safety officer to a location or duty assignment not normally sent or given to a sworn member of his or her department under similar circumstances. Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against a public safety officer, the officer has the right to be represented by a representative of his or her choice, who may not be a person subject to the same investigation. The representative may not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This bill would *specify that these provisions apply to a representative who is also a public safety officer*; and also prohibit the representative from being a person who is a witness in the investigation. It would additionally provide that the representative may not be required to disclose, nor be subject to punitive action for refusing to disclose, any information *not related to criminal activity* received in a representational capacity from the officer under investigation, except in criminal investigations ~~and~~ or proceedings, prohibit this information from being used in any subsequent punitive action, and make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3303 of the Government Code is
2 amended to read:

3 3303. When any public safety officer is under investigation
4 and subjected to interrogation by his or her commanding officer,
5 or any other member of the employing public safety department,
6 that could lead to punitive action, the interrogation shall be
7 conducted under the following conditions. For the purpose of this
8 chapter, punitive action means any action that may lead to
9 dismissal, demotion, suspension, reduction in salary, written
10 reprimand, or transfer for purposes of punishment. The conditions
11 set forth in subdivisions ~~(h)~~ (a), (d), (e), (f), (i), and (j) shall also
12 apply when any ~~public safety~~ employee representative *who is also*
13 *a public safety officer* is interviewed by a commanding officer, or
14 any other member of the employing public safety department,
15 regarding information received in a representational capacity from
16 an officer under investigation.

17 (a) The interrogation shall be conducted at a reasonable hour,
18 preferably at a time when the public safety officer is on duty, or
19 during the normal waking hours for the public safety officer,
20 unless the seriousness of the investigation requires otherwise. If
21 the interrogation does occur during off-duty time of the public
22 safety officer being interrogated, the public safety officer shall be
23 compensated for any off-duty time in accordance with regular
24 department procedures, and the public safety officer shall not be
25 released from employment for any work missed.

1 (b) The public safety officer under investigation shall be
2 informed prior to the interrogation of the rank, name, and
3 command of the officer in charge of the interrogation, the
4 interrogating officers, and all other persons to be present during
5 the interrogation. All questions directed to the public safety officer
6 under interrogation shall be asked by and through no more than
7 two interrogators at one time.

8 (c) The public safety officer under investigation shall be
9 informed of the nature of the investigation prior to any
10 interrogation.

11 (d) The interrogating session shall be for a reasonable period
12 taking into consideration gravity and complexity of the issue being
13 investigated. The person under interrogation shall be allowed to
14 attend to his or her own personal physical necessities.

15 (e) The public safety officer under interrogation shall not be
16 subjected to offensive language or threatened with punitive action,
17 except that an officer refusing to respond to questions or submit to
18 interrogations shall be informed that failure to answer questions
19 directly related to the investigation or interrogation may result in
20 punitive action. No promise of reward shall be made as an
21 inducement to answering any question. The employer shall not
22 cause the public safety officer under interrogation to be subjected
23 to visits by the press or news media without his or her express
24 consent nor shall his or her home address or photograph be given
25 to the press or news media without his or her express consent.

26 (f) No statement made during interrogation by a public safety
27 officer under duress, coercion, or threat of punitive action shall be
28 admissible in any subsequent civil proceeding. This subdivision is
29 subject to the following qualifications:

30 (1) This subdivision shall not limit the use of statements made
31 by a public safety officer when the employing public safety
32 department is seeking civil sanctions against any public safety
33 officer, including disciplinary action brought under Section
34 19572.

35 (2) This subdivision shall not prevent the admissibility of
36 statements made by the public safety officer under interrogation
37 in any civil action, including administrative actions, brought by
38 that public safety officer, or that officer's exclusive representative,
39 arising out of a disciplinary action.

1 (3) This subdivision shall not prevent statements made by a
2 public safety officer under interrogation from being used to
3 impeach the testimony of that officer after an in camera review to
4 determine whether the statements serve to impeach the testimony
5 of the officer.

6 (4) This subdivision shall not otherwise prevent the
7 admissibility of statements made by a public safety officer under
8 interrogation if that officer subsequently is deceased.

9 (g) The complete interrogation of a public safety officer may
10 be recorded. If a tape recording is made of the interrogation, the
11 public safety officer shall have access to the tape if any further
12 proceedings are contemplated or prior to any further interrogation
13 at a subsequent time. The public safety officer shall be entitled to
14 a transcribed copy of any notes made by a stenographer or to any
15 reports or complaints made by investigators or other persons,
16 except those which are deemed by the investigating agency to be
17 confidential. No notes or reports that are deemed to be confidential
18 may be entered in the officer's personnel file. The public safety
19 officer being interrogated shall have the right to bring his or her
20 own recording device and record any and all aspects of the
21 interrogation.

22 (h) If prior to or during the interrogation of a public safety
23 officer it is deemed that he or she may be charged with a criminal
24 offense, he or she shall be immediately informed of his or her
25 constitutional rights.

26 (i) Upon the filing of a formal written statement of charges, or
27 whenever an interrogation focuses on matters that are likely to
28 result in punitive action against any public safety officer, that
29 officer, at his or her request, shall have the right to be represented
30 by a representative of his or her choice who may be present at all
31 times during the interrogation. The representative shall not be a
32 person subject to the same investigation or a person who was a
33 witness to events relating to the investigation. ~~The representative~~
34 ~~shall not be required to disclose, nor be subject to any punitive~~
35 ~~action for refusing to disclose, any information received in a~~
36 ~~representational capacity from the officer under investigation,~~
37 ~~except in criminal investigations and proceedings, nor shall this~~
38 ~~information be used in any subsequent punitive action. Except in~~
39 ~~criminal investigations or proceedings, the representative shall~~
40 ~~not be required to disclose, nor be subject to any punitive action~~

1 *for refusing to disclose, any information not related to criminal*
 2 *activity received in a representational capacity from the officer*
 3 *under investigation. In criminal investigations or proceedings, the*
 4 *representative shall be required to disclose all information*
 5 *received in a representational capacity from the officer under*
 6 *investigation. Information related to criminal activity in this*
 7 *circumstance may be used in any subsequent punitive action*
 8 *brought by the officer's employer against either the representative*
 9 *or the officer who provided the information to the representative.*
 10 *However, none of the information received from the officer under*
 11 *investigation by the representative that is not related to criminal*
 12 *activity may be used against either the representative or the officer*
 13 *under investigation who provided the information in any*
 14 *subsequent punitive action brought by the employer.*

15 (j) This section shall not apply to any interrogation of a public
 16 safety officer, or interview with a public safety employee
 17 representative, in the normal course of duty, counseling,
 18 instruction, or informal verbal admonishment by, or other routine
 19 or unplanned contact with, a supervisor or any other public safety
 20 officer, nor shall this section apply to an investigation concerned
 21 ~~solely and directly~~ with alleged criminal activities.

22 (k) No public safety officer or public safety employee
 23 representative shall be loaned or temporarily reassigned to a
 24 location or duty assignment if a sworn member of his or her
 25 department would not normally be sent to that location or would
 26 not normally be given that duty assignment under similar
 27 circumstances.

28 SEC. 2. Section 3304 of the Government Code is amended to
 29 read:

30 3304. (a) No public safety officer or public safety employee
 31 representative shall be subjected to punitive action, or denied
 32 promotion, or be threatened with any such treatment, because of
 33 the lawful exercise of the rights granted under this chapter, or the
 34 exercise of any rights under any existing administrative grievance
 35 procedure.

36 Nothing in this section shall preclude a head of an agency from
 37 ordering a public safety officer to cooperate with other agencies
 38 involved in criminal investigations. If an officer fails to comply
 39 with such an order, the agency may officially charge him or her
 40 with insubordination.

1 (b) No punitive action, nor denial of promotion on grounds
2 other than merit, shall be undertaken by any public agency against
3 any public safety officer who has successfully completed the
4 probationary period that may be required by his or her employing
5 agency without providing the public safety officer with an
6 opportunity for administrative appeal.

7 (c) No chief of police may be removed by a public agency, or
8 appointing authority, without providing the chief of police with
9 written notice and the reason or reasons therefor and an
10 opportunity for administrative appeal.

11 For purposes of this subdivision, the removal of a chief of police
12 by a public agency or appointing authority, for the purpose of
13 implementing the goals or policies, or both, of the public agency
14 or appointing authority, for reasons including, but not limited to,
15 incompatibility of management styles or as a result of a change in
16 administration, shall be sufficient to constitute “reason or
17 reasons.”

18 Nothing in this subdivision shall be construed to create a
19 property interest, where one does not exist by rule or law, in the job
20 of chief of police.

21 (d) Except as provided in this subdivision and subdivision (g),
22 no punitive action, nor denial of promotion on grounds other than
23 merit, shall be undertaken for any act, omission, or other allegation
24 of misconduct if the investigation of the allegation is not
25 completed within one year of the public agency’s discovery by a
26 person authorized to initiate an investigation of the allegation of
27 an act, omission, or other misconduct. This one-year limitation
28 period shall apply only if the act, omission, or other misconduct
29 occurred on or after January 1, 1998. In the event that the public
30 agency determines that discipline may be taken, it shall complete
31 its investigation and notify the public safety officer of its proposed
32 disciplinary action within that year, except in any of the following
33 circumstances:

34 (1) If the act, omission, or other allegation of misconduct is also
35 the subject of a criminal investigation or criminal prosecution, the
36 time during which the criminal investigation or criminal
37 prosecution is pending shall toll the one-year time period.

38 (2) If the public safety officer waives the one-year time period
39 in writing, the time period shall be tolled for the period of time
40 specified in the written waiver.

1 (3) If the investigation is a multijurisdictional investigation
2 that requires a reasonable extension for coordination of the
3 involved agencies.

4 (4) If the investigation involves more than one employee and
5 requires a reasonable extension.

6 (5) If the investigation involves an employee who is
7 incapacitated or otherwise unavailable.

8 (6) If the investigation involves a matter in civil litigation
9 where the public safety officer is named as a party defendant, the
10 one-year time period shall be tolled while that civil action is
11 pending.

12 (7) If the investigation involves a matter in criminal litigation
13 where the complainant is a criminal defendant, the one-year time
14 period shall be tolled during the period of that defendant's criminal
15 investigation and prosecution.

16 (8) If the investigation involves an allegation of workers'
17 compensation fraud on the part of the public safety officer.

18 (e) Where a predisciplinary response or grievance procedure is
19 required or utilized, the time for this response or procedure shall
20 not be governed or limited by this chapter.

21 (f) If, after investigation and any predisciplinary response or
22 procedure, the public agency decides to impose discipline, the
23 public agency shall notify the public safety officer in writing of its
24 decision to impose discipline, including the date that the discipline
25 will be imposed, within 30 days of its decision, except if the public
26 safety officer is unavailable for discipline.

27 (g) Notwithstanding the one-year time period specified in
28 subdivision (c), an investigation may be reopened against a public
29 safety officer if both of the following circumstances exist:

30 (1) Significant new evidence has been discovered that is likely
31 to affect the outcome of the investigation.

32 (2) One of the following conditions exist:

33 (A) The evidence could not reasonably have been discovered
34 in the normal course of investigation without resorting to
35 extraordinary measures by the agency.

36 (B) The evidence resulted from the public safety officer's
37 predisciplinary response or procedure.

38 (h) For those members listed in subdivision (a) of Section
39 830.2 of the Penal Code, the 30-day time period provided for in
40 subdivision (e) shall not commence with the service of a

- 1 preliminary notice of adverse action, should the public agency
- 2 elect to provide the public safety officer with such a notice.

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